(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Cri. Appeal No. 231 /2001

APPELLANT ( In Jail ) : Athma Ram S/O. Parau Ram
aged about 20 years
R/O. Vill : Weedgaun
P.S. Dondi Dist : Durg ( CG )

VERSUS

RESPONDENTS : State of Chhattisgarh through
P.S. Dondi, Dist : Durg.

CRIMINAL APPEAL U/S 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

3-2001 ... Advocate R. to AR

XI-HC-22

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** G.A. 291/ **सन्** 2001

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

11-10-2006

Mr. P. Diwaker, Senior Advocate with Mr. Adil Minhaj, Advocate for the appellant.

Mr. Akil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 17-3-2001 passed by the Additional Sessions Judge, Balod, in Sessions Trial No.350/99, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for three months.

Case of the prosecution, in brief, is that in the intervening night of 16th & 17th July, 1999, at about 10 p.m. deceased Santosh Kumar along with Ramsingh went in front of the house of Leela Bai for watching film which was being exhibited on video. Witness Sampatlal was already present there. Thereafter, three of them left towards the village pond in order to attend the call of nature. Accused Atmaram also followed them. Sampatlal along with Ramsingh went on

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** G.A.291/... **सन्** 2001

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the bank of the pond to attend the call of nature. Accused Atmaram & Santosh sat near the well and thereafter, they went to wash their hands near the culvert. Accused Atmaram & Santosh were going towards the village and after some distance Sampatlal & Ramsingh heard the screams of Santosh, therefore they rushed towards that side and saw that Santosh was lying on the ground. They lifted Santosh on which Santosh said that Atmaram has stabbed him with a knife and ran away. Santosh said that he be taken to the hospital. Faguram (PW-1), grandfather of Santosh, was informed and they took Santosh to Faguram's place. Faguram saw that there was a stab wound injury on the stomach of Santosh, intestine came out of the stab wound and Santosh was bleeding from the injury. Santosh was taken to the hospital, however, he succumbed to the injuries sustained by him. Faguram gave Dehati Nalishi Ex.P-1 in Police Station: Dondi. Ex.P-13 Merg intimation was given by A.S.I. J.P. Kathote. Based on these documents, Ex.P-14 merg was registered at Crime No.52.

Receiving the report, Station House Officer Sunderlal Jangde registered the F.I.R. Ex.P-15 and took up the investigation. The Investigating Officer also reached the hospital. The Investigating Officer after giving notice Ex.P-2 to the Panchas, prepared the inquest Ex.P-3 of the body of Santosh Kumar. Weapon of offence knife and blood stained clothes of the accused along with shawl were

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** Cr.A.291/ **सन्** **200**(



..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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taken into possession by the Investigating Officer under seizure memo Ex.P-6 on 18-7-1999.

Post-mortem of the body of Santosh was conducted by Dr. L.L. Markandey (PW-5) and he prepared the post-mortem report Ex.P-8. He noticed that there was a punctured wound on the right side of the abdomen, stab wound at naval region right side 3 cms. from mid line 6 cms. above the umbilicus. The stab wound was transversely placed 4 cms. in length & 2 cms. in breadth and passed through the abdomen wall and punctured the small intestine. The doctor opined that the cause of death was haemorrhage and shock due to grievous injuries (stab wound) in abdomen and small intestine. The knife was sent to Dr. L.L. Markandey for opinion who opined as per the report Ex.P-9 that it was possible to cause the injury, which was caused to Santosh with the knife in question.

Clothes of the deceased were seized under Ex.P-11. Site plan Ex.P-12 of the place of occurrence was prepared. Recovered articles were sent for chemical examination to the Forensic Science Laboratory, Raipur, from where the report Ex.P-16 and Serologist report Ex.P-17 were received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Balod, who in turn committed the case to the Sessions Judge, Durg, from where learned Additional Sessions Judge received the case on transfer for trial.

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** Cr.A.291/ **सन्** **200**



..... **विरुद्ध** .....

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The prosecution in order to establish charge against the accused examined eight witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. In reply to question Nos.3 & 4, the accused said that he went to watch video film in front of the house of Leela Bai and Santosh was also present there. Other part of the evidence appearing against the accused was denied by him and he said that he is innocent and has been falsely implicated in the crime. After conclusion of trial, learned Additional Sessions Judge convicted and sentenced the accused.

We have heard Mr. P. Diwaker, learned Senior Advocate with Mr. Adil Minhaj, learned Advocate for the appellant and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.

Learned counsel for the appellant has not disputed the homicidal death of Santosh. Apart from that, Sampatlal (PW-4) had stated in his evidence that he saw injury on the stomach of deceased Santosh and the deceased disclosed that accused Atmaram has stabbed him and ran away, the deceased was bleeding from the injury. He along with Ramsingh & Ganguram took the deceased to the house of Faguram from where the deceased was taken to the hospital, where the deceased succumbed to the injuries sustained by him. Dr. L.L. Markandey (PW-5), the doctor who conducted post-mortem on the body of Santosh, has stated in his evidence that there was a stab injury on the stomach of the deceased above the umbilicus and the

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** ...C.A.291/ **सन्** 200/ 5

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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small intestine was coming out of the injury. The small intestine was also punctured and Santosh died on account of haemorrhage and shock as a result of the injury caused to stomach and the death was homicidal in nature. Therefore, in view of the above evidence, it is established that the death of Santosh was homicidal in nature.

As far as involvement of the accused/appellant in the commission of crime is concerned, the prosecution has tried to establish the crime against the accused on the following circumstances: -

1. that, deceased Santosh made oral dying declaration before PW-4 Sampatlal;
2. that, the deceased, Ramsingh & Sampatlal went together to attend the call of nature, the accused followed them and when Ramsingh & Sampatlal went near the pond to attend the call of nature, the accused & the deceased were sitting near the well, thereafter, they were going towards the village and all of a sudden Santosh raised cries on which Sampatlal & Ramsingh rushed towards him and saw the accused in injured condition, however, the accused disappeared from the place of occurrence; and
3. the knife, weapon of offence, was recovered at the instance of the accused.

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** G.A.291 **सन्** 200 | 6

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | As far as the first circumstance is concerned, Sampatlal (PW-4) has stated in his evidence that on the fateful night he went to watch video film in front of the house of Leela Bai, deceased Santosh & Ramsingh also came there, the accused was also present there and when he along with the deceased & Ramsingh were going towards the village pond to attend the call of nature, the accused followed them. When he along with Ramsingh were attending the call of nature, the accused & the deceased were sitting near the well and thereafter, when they went towards culvert for washing their hands they saw that the accused & the deceased were going towards the village. Thereafter, they heard the screams of Santosh. When they rushed towards that side, they saw that Santosh was lying on the ground. He said that accused Atmaram has stabbed him with knife and they should take him to the hospital. Therefore, in view of the above evidence, the deceased made oral dying declaration before this witness Sampatlal (PW-4). In cross-examination of this witness, he has categorically stated that it is incorrect to say that when he reached near Santosh, he was unconscious and it has not come in cross-examination that the dying declaration was not made to this witness by the deceased. Even the accused himself has admitted in the statement under Section 313 of the Cr.P.C. that the deceased and he were present in front of the house of Leela Bai where video film was being exhibited. In cross-examination of this witness, nothing | |

(पीछे देखिये)

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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has been elicited that this witness has any animosity against the accused and in order to implicate him in a false case he has deposed against the accused. Moreover, the above dying declaration stands corroborated by the fact that the knife, weapon of offence, was recovered under Ex.P-6 at the instance of the accused in pursuance of the memorandum Ex.P-5 given by the accused and this knife, as per the F.S.L. report, was found stained with blood.

Therefore, it is established that the deceased made voluntary and true oral dying declaration before Sampatlal (PW-4).

As far as the second circumstance is concerned, Sampatlal (PW-4) has stated in his evidence that he along with Ramsingh & Santosh went to attend the call of nature, the accused followed them and when he & Ram Singh were attending the call of nature near the pond, the accused & the deceased were sitting near the well and thereafter, they were going towards the village. All of a sudden, Santosh raised screams, when they rushed towards him they saw that Santosh was lying in injured condition and the accused was not there. Therefore, the accused was with the deceased just before the incident and he disappeared from the place of occurrence, this conduct of the accused is admissible under Section 8 of the Indian Evidence Act, 1872 that he was with the deceased and he ran away from the place of occurrence. No explanation has been offered by the accused regarding his disappearance.

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** G.A. 2-91 / **सन्** 200( 8

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Learned counsel for the appellant argued that as per the evidence of this witness Sampatlal (PW-4), there was dark night, therefore it was not possible for this witness to see the accused.

It is true that this witness has admitted in cross-examination that there was dark night and it was not possible for them to see from the place where they were washing their hands, but he has not stated that he saw the accused stabbing the deceased. The evidence of this witness is to the extent that he along with Ramsingh and the deceased went to attend the call of nature, the accused followed them, and thereafter, the accused & the deceased were sitting near the well, and when they heard the screams of deceased Santosh they rushed towards that side, the accused was missing from that place. To this extent, the evidence of this witness PW-4 inspires confidence.'

Learned counsel for the appellant also argued that the prosecution has not been able to establish any motive behind the crime.

It is true that the prosecution has not come forward with any motive for commission of crime. If motive is established, then it is one of the strong circumstances against the accused to connect him with the crime. But, in cases where there is legal clinching evidence connecting the accused with the crime, absence of motive does not effect the prosecution case.

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** CA 291 **सन्** 2001

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Learned counsel for the appellant further argued that as per the evidence of Dr. L.L. Markandey (PW-5), he did not saw hole in the banian of the deceased, therefore, the case of the prosecution stabbing of the deceased stands belied.

It is true that the doctor has said so, but if we look into the seizure memo (Ex.P-6) of the clothes of the deceased, it has been categorically mentioned that on shirt & baniyan of the deceased there was a cut hole corresponding to stomach of the deceased. In view of the above document, the doctor's evidence that he did not saw hole on banian of the deceased becomes insignificant. Therefore, from the evidence of Sampatlal (PW-4), it is established that just before the incident, the accused & the deceased were together and when the stab injury was caused to deceased Santosh, he raised screams, this witness along with Ramsingh reached near Santosh and the accused was missing. In the circumstances, it is established that the accused was present with the deceased just before the commission of crime, he immediately disappeared and has not explained about his disappearance from the place of occurrence.

As far as the third circumstance is concerned, as per the evidence of J.P. Kathote (PW-8), Assistant Sub Inspector and Investigating Officer, the accused while in police custody gave memorandum Ex.P-5 and he informed that he had kept the knife, weapon of offence, in the kitchen garden of his house, he can get the

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** ...G.A.291/... **सन्** **200** |

10

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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same recovered and in pursuance of that, he got recovered the knife, same was taken into possession under Ex.P-6. As is mentioned earlier, the knife was examined by Dr L.L. Markandey (PW-5) who has said that it was possible to cause the injury, which was present on the stomach of the deceased, with the knife in question. As per the F.S.L. report, the knife was found stained with blood. Therefore, the recovery of knife at the instance of the accused, same was found stained with blood and as per the doctor's opinion, recovery of the knife connects with the crime in question. It is true that on account of disintegration of blood, blood group could not be ascertained on the knife, but, if the fact that the blood was found on the knife and if the doctor's evidence, coupled with other circumstantial evidence are taken together, it establishes that the knife in question which was recovered at the instance of the accused was used for commission of the crime in question.

Therefore, if all the above three circumstances taken together i.e. (1) oral dying declaration made by the deceased to Sampatlal (PW-4); (2) at the time of commission of crime the accused was in company of the deceased and he disappeared, which has not been explained by the accused; and (3) the weapon of offence, knife, stained with blood was recovered at the instance of the accused, same establish involvement of the accused and an irresistible conclusion can be drawn that the accused was the author of crime in the question.

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** CG:A.291/ **सन्** 200 1

..... **विरुद्ध** .....

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Therefore, to this extent, finding of the trial Court connecting the accused with the crime in question does not suffer from any illegality or infirmity and the same is based on legal evidence.

Mr. Adil Minhaj, learned counsel for the appellant also argued that the prosecution has not been able to establish motive of the accused behind the crime and also there is no evidence available on record that the accused and the deceased had any animosity and there was only one injury, as such, the prosecution has not been able to establish intention of the accused to cause the death of Santosh.

On the other hand, Mr. Mishra, learned Panel Lawyer for the State/respondent supported the judgment of the trial Court.

There is no direct evidence regarding intention. It can be inferred based on the evidence available on record i.e. kind of the weapon used and place of the body where the injury was caused. In the present case, the accused used knife and he attacked the deceased on stomach above the umbilicus as a result of which small intestine of the deceased came out from the punctured wound and even the small intestine was also punctured, and Santosh died within half an hour of the injury. Therefore, from the above facts, it can safely be inferred that the accused assaulted the deceased with an intention to cause death that is why he attacked the deceased with a deadly weapon like knife, that too on the vital organ of the deceased which resulted into immediate death of the deceased. In the

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** ..... G.A.291 ..... **सन्** **200** (

12

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | circumstances, intention of the accused was writ large to commit the murder of Santosh.<br>In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed.<br>**Sd/-**<br>**L.C.BHADOO**<br>**Judge**<br>**Sd/-**<br>**V.K.Shrivastava**<br>**Judge** | |

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